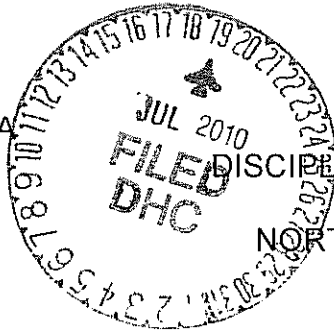


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
10 DHC 26

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THE NORTH CAROLINA STATE BAR, )  
Plaintiff )

v. )

JERRY M. SMITH, Attorney, )  
Defendant )

COMPLAINT

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Plaintiff, complaining of defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereinafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Jerry M. Smith (hereinafter "Smith" or "Defendant"), was admitted to the North Carolina State Bar on August 9, 1988 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, the State Bar alleges:

3. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Winston-Salem, Forsyth County, North Carolina.

4. Between February 1, 2002 and December 29, 2009 Defendant maintained a client trust account with SunTrust Bank, account number ending in the digits 2737 (hereinafter the "SunTrust trust account").

5. Defendant used the SunTrust trust account as a general trust account in which Defendant deposited and disbursed client funds.

6. On or about April 18, 2005 Defendant received funds on behalf of client Helen Robertson in settlement of Ms. Robertson's personal injury claim.

7. From the funds received on behalf of Ms. Robertson, Defendant retained in the SunTrust trust account approximately \$40,000.00 for payment of such sums as might be required by Medicare to reimburse it for funds paid by Medicare on Ms. Robertson's behalf.

8. On or about August 28, 2006 Medicare notified Defendant of the amount due Medicare on Ms. Robertson's behalf and requested immediate payment of that amount.

9. The funds held by Defendant in excess of the amount of the Medicare lien belonged to Ms. Robertson.

10. As of December 29, 2009 Defendant had not disbursed to Medicare any of the funds held on behalf of Ms. Robertson and had not disbursed to Ms. Robertson any remaining funds in excess of the Medicare lien.

11. Ms. Robertson and/or her son made numerous efforts to contact Defendant about the funds he held for Ms. Robertson but Defendant did not respond to their inquiries.

12. On or about August 10, 2006 Defendant received funds on behalf of client Charles Miller in settlement of Mr. Miller's personal injury claim.

13. From the funds received on behalf of Mr. Miller, Defendant retained in the SunTrust trust account approximately \$12,000.00 for payment of such sums as might be required by Medicare to reimburse it for funds paid by Medicare on Mr. Miller's behalf.

14. On or about November 18, 2006 Defendant requested Medicare to notify Defendant of the amount due Medicare on Mr. Miller's behalf. Defendant made no further efforts to determine the amount of the Medicare lien.

15. The funds held by Defendant in excess of the amount of any Medicare lien belonged to Mr. Miller.

16. As of December 29, 2009 Defendant had not disbursed to Medicare any of the remaining funds held on behalf of Mr. Miller and had not disbursed to Mr. Miller any funds in excess of the Medicare lien.

17. Mr. Miller's attorney made several efforts to contact Defendant about the funds Defendant held for Mr. Miller but Defendant did not respond to those inquiries.

18. As of December 2007 Defendant stopped practicing law and did not deposit any more client funds into his SunTrust trust account.

19. As of December 29, 2009 Defendant held client funds in excess of \$62,000.00 in the SunTrust trust account, including the funds belonging to Ms. Robertson and Mr. Miller.

20. As of December 20, 2009 Defendant had not appropriately disbursed those funds held in trust on behalf of his clients.

21. Defendant did not prepare and keep client ledger cards reflecting funds held in trust for his clients.

22. Defendant did not reconcile the SunTrust trust account at least quarterly between February 1, 2002 and December 29, 2009.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

a. by failing to follow through in determining the amount of Mr. Miller's Medicare lien and failing to properly disburse trust funds belonging to clients or third parties, Defendant did not act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

b. by failing to respond to the inquiries of Ms. Robertson, her son and Mr. Miller's attorney, Defendant failed to keep his clients reasonably informed about the status of their matters and did not promptly comply with reasonable requests for information in violation of Rule 1.4(a)(3) and (4);

c. by failing to timely disburse funds held on behalf of clients, Defendant did not promptly pay or deliver to the client entrusted property belonging to the client or to third parties and to which the client or third parties were currently entitled in violation of Rule 1.15-2(a) and (m);

d. by failing to properly disburse client funds remaining in his attorney trust account when he stopped practicing law, Defendant did not take steps reasonably necessary to protect the clients' interests in violation of Rule 1.16(d);

e. by failing prepare and maintain client ledger cards, Defendant failed to maintain a ledger containing a record of receipts and disbursements for each person from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person in violation of Rule 1.15-3(b)(5); and

f. by failing to reconcile his trust account at least quarterly, Defendant failed to total and reconcile the account with the current bank balance each quarter in violation of Rule 1.15-3(c).

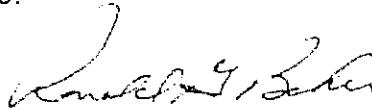
WHEREFORE, the State Bar prays that

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. §84-28 (c) and 27 N.C.A.C. 1B §.0114 as the evidence on hearing may warrant;

2. Defendant be taxed with costs and fees in connection with this proceeding; and

3. For such other and further relief as is appropriate.

This the 19<sup>th</sup> day of July, 2010.



Ronald G. Baker, Sr., Chair  
Grievance Committee



Margaret Cloutier, Deputy Counsel  
Attorney for Plaintiff  
The North Carolina State Bar  
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